IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8149 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE D.H.WAGHELA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

KALOL DUDH VAPARNARI SAHKARI MANDLI LTD

Versus

ARVIND MAGANLAL JOSHI C/O GUJARAT WORKS & UTTAR

Appearance:

MR DIPAK R DAVE for Petitioner

MR PH PATHAK for Respondent No. 1

CORAM : MR.JUSTICE D.H.WAGHELA

Date of decision: 07/09/2000

ORAL JUDGEMENT

#. The petitioner employer challenges award of the Labour Court, Kalol whereby the respondent is ordered to be reinstated with full backwages.

#. It is submitted by Learned Counsel for the petitioner

that the respondent was a part time employee and he has abandoned his job on account of being busy with his own business. It is submitted that the findings to the contrary are perverse and illegal. Going through the impugned award it appears that the Learned Judge of the Labour Court has taken into account the terms of reference as also the evidence placed on record. After discussing and considering the evidence, a specific finding of fact is recorded to the effect that after the respondent having joined the service of the petitioner in 1999 the petitioner has passed a resolution which is obviously an after-thought to show the workman to be a part time employee. It is also concluded that the plea of the petitioner as regards private business of the respondent was not proved. It is also held to be not proved that the respondent was irregular in his service and had abandoned the job. The Learned Counsel for the petitioner has referred to the evidence led before the Labour Court and failed to show as to how these findings of facts are perverse. Under such circumstances, there is no error in the award ordering reinstatement of the respondent.

#. The Learned Counsel has further submitted that in any case the order of payment of full backwages to the respondent was not justified in view of the fact that the witness of the petitioner had categorically and out of his personal knowledge deposed that the respondent was running a milk-center after the termination of his service. It is fairly conceded on behalf of the respondent that the respondent might not have been absolutely idle. Of course, the Learned Counsel for the respondent has also submitted that even during his employment under the petitioner the respondent might have been doing any other job in the extra hours. In this circumstances, the modification of the impugned order to the extent that the petitioner shall pay 60% backwages to the respondent will meet the end of justice. The petition is partly allowed and impugned award is modified to the extent that the respondent shall be entitled to reinstatement with 60% backwages and the cost as awarded in the impugned award. Rule is made absolute in these terms with no order as to costs. This order shall be complied by the petitioner within two months from today.

(D. H. WAGHELA, J.)
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